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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1405

Introduced by Assembly Members De León and V. Manuel Pérez
(Coauthors: Assembly Members Arambula, Caballero, Carter,
Coto, Fuentes, Hernandez, Mendoza, Salas, Saldaña, and Solorio)
(Coauthors: Senators Pavley, Price, and Romero)

February 27, 2009

~~An act to add Section 38597.4 to the Health and Safety Code, relating to air pollution.~~ *An act to add Part 5 (commencing with Section 71420) to Division 34 of the Public Resources Code, relating to climate change.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1405, as amended, De León. California Global Warming Solutions Act of 2006: *California Climate Change* Community Benefits Fund.

The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and

enforce compliance with the reporting and verification program, and requires the state board to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020. The act requires the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The act authorizes the state board to include the use of market-based compliance mechanisms. The act authorizes the state board to adopt a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act, and requires the revenues collected pursuant to that fee to be deposited into the Air Pollution Control Fund and be available, upon appropriation by the Legislature, for purposes of carrying out the act.

This bill would establish the *California Climate Change* Community Benefits Fund, and would require a minimum of ~~30%~~ 10% of revenues generated *for the state each year from the state sale of compliance instruments for market-based compliance mechanisms* pursuant to the act, ~~including the fee discussed above,~~ other than revenues collected for administrative purposes, to be deposited into that fund. The moneys in the fund would be used, upon appropriation by the Legislature, in the most impacted and disadvantaged communities ~~in California to accelerate greenhouse gas emission reductions or mitigate direct health impacts of climate change in those communities.~~ The state board would be required to develop a methodology to identify the most impacted and disadvantaged communities. The state board would be required to prepare a report by June 30, 2011, that describes how this bill will be implemented. The bill would require the report to provide for the formation of an independent panel to review, evaluate, and recommend approval of projects and programs solicited for funding. The state board would also be required to develop and adopt biennial plans for the use of funds, *as defined, to fund programs or projects that reduce greenhouse gas emissions or mitigate direct health, or environmental, impacts of climate change through competitive grants, loans, or other funding mechanisms.* The Secretary for Environmental Protection would be required to administer moneys appropriated from the fund and would be required to establish criteria and procedures, and meet other requirements in connection with implementation, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Part 5 (commencing with Section 71420) is added*
2 *to Division 34 of the Public Resources Code, to read:*

3
4 *PART 5. CALIFORNIA CLIMATE CHANGE COMMUNITY*
5 *BENEFITS FUND*
6

7 *71420. It is the intent of the Legislature that:*

8 *(a) Investments made pursuant to this part include, to the*
9 *greatest extent possible, green collar employment opportunities*
10 *for low-income residents in the most impacted and disadvantaged*
11 *communities.*

12 *(b) The evaluation criteria for air pollution exposure consider,*
13 *at a minimum, criteria and toxic air pollutant levels, proximity to*
14 *sources of air pollution, and sensitive populations.*

15 *(c) The evaluation criteria for socioeconomic vulnerability*
16 *consider, to the extent feasible, multiple indicators, including, but*
17 *not limited to, poverty level, percent home ownership,*
18 *unemployment level, and educational attainment.*

19 *71421. As used in this part, “most impacted and disadvantaged*
20 *communities” means either those areas having the highest 10*
21 *percent air pollution exposure and socioeconomic vulnerability*
22 *within an air basin that does not meet one or more national or*
23 *state ambient air quality standards, or those areas having the*
24 *highest 10 percent socioeconomic vulnerability to direct health,*
25 *or environmental, impacts of climate change.*

26 *71422. (a) There is established in the State Treasury the*
27 *California Climate Change Community Benefits Fund. A minimum*
28 *of 10 percent of revenues generated for the state each year from*
29 *the state sale of compliance instruments for market-based*
30 *compliance mechanisms pursuant to Section 38570 of the Health*
31 *and Safety Code, other than revenues collected for administrative*
32 *purposes, shall be deposited into the California Climate Change*
33 *Community Benefits Fund. The moneys in the fund shall be used,*
34 *upon appropriation by the Legislature, for the purposes described*
35 *in this part.*

36 *(b) Moneys in the California Climate Change Community*
37 *Benefits Fund shall be used solely in the most impacted and*
38 *disadvantaged communities.*

1 (c) Notwithstanding Section 16475 of the Government Code,
2 any interest earned on moneys in the California Climate Change
3 Community Benefits Fund shall be deposited in the California
4 Climate Change Community Benefits Fund for expenditure
5 pursuant to this part.

6 (d) Up to 5 percent of the moneys in the California Climate
7 Change Community Benefits Fund may be used for purposes of
8 administering this part, upon appropriation by the Legislature.

9 (e) To the extent that funds are provided to existing programs,
10 those funds shall be used to supplement, not supplant, those
11 programs to meet the goals of this part.

12 71423. (a) The Secretary for Environmental Protection shall
13 administer moneys appropriated from the California Climate
14 Change Community Benefits Fund and shall establish criteria and
15 procedures for the implementation of this part. The secretary shall
16 implement the program created pursuant to this part no later than
17 six months after a market-based compliance mechanism, as
18 described in Section 38570 of the Health and Safety Code, becomes
19 operative.

20 (b) Moneys in the California Climate Change Community
21 Benefits Fund shall be used to fund programs or projects that
22 reduce greenhouse gas emissions or mitigate direct health, or
23 environmental, impacts of climate change, through competitive
24 grants, loans, or other funding mechanisms. Moneys may be
25 appropriated for green collar employment opportunities for the
26 most impacted and disadvantaged communities.

27 (c) (1) The Secretary for Environmental Protection, in
28 consultation with the Climate Action Team, shall use a geographic
29 information system-based method, to the extent feasible, to identify
30 the most impacted and disadvantaged communities that qualify
31 for funding using census block or tract level data, to the extent
32 reasonably available.

33 (2) The identification of the most impacted and disadvantaged
34 communities shall be done through an open and public process,
35 no later than six months after a market-based compliance
36 mechanism, as described in Section 38570 of the Health and Safety
37 Code, becomes operative.

38 (3) The identification of the most impacted and disadvantaged
39 communities may be modified periodically in an open and public
40 process.

(4) *The scientific basis for the identification of the most impacted and disadvantaged communities shall be subject to peer review pursuant to Section 57004 of the Health and Safety Code.*

71424. (a) *The Secretary for Environmental Protection, following an open and public process, shall develop and adopt a report that describes the support structure and framework for the implementation of this part, the types of programs and projects to be funded under this part, the selection and oversight process for the projects and programs to be funded, and the eligibility criteria. The report shall be made available to the public on the California Environmental Protection Agency's Internet Web site.*

(b) *No later than six months after a market-based compliance mechanism, as described in Section 38570 of the Health and Safety Code, becomes operative, and every two years thereafter, the Secretary for Environmental Protection, in consultation with the Climate Action Team, in an open process, shall develop and adopt biennial plans describing the specific type of programs and projects to be solicited for funding during the two-year period. The report shall be made available to the public on the California Environmental Protection Agency's Internet Web site.*

(c) *The Secretary for Environmental Protection shall convene a review panel to make recommendations and review the development of policies, plans, and programs as they relate to this part.*

(d) *To the extent practical, existing support structures, frameworks, and programs shall be used to implement this part.*

~~SECTION 1. It is the intent of the Legislature that investments made pursuant to this act shall include, to the greatest extent possible, green collar employment opportunities for low-income residents of the targeted communities.~~

~~SEC. 2. Section 38597.4 is added to the Health and Safety Code, to read:~~

~~38597.4. (a) There is hereby established in the State Treasury the Community Benefits Fund. A minimum of 30 percent of the remaining revenues generated each year pursuant to this division, including, but not limited to, Section 38597, other than revenues collected for administrative purposes, shall be deposited by the state board into the Community Benefits Fund. The moneys in the fund shall be used, upon appropriation by the Legislature, for the purposes described in subdivision (b).~~

~~(b) (1) Funds appropriated by the Legislature from the Community Benefits Fund shall be used solely in the most impacted and disadvantaged communities in California to accelerate greenhouse gas emission reductions or mitigate direct health impacts of climate change in those communities. Funds appropriated shall be used to provide competitive grants for projects that reduce greenhouse gas emissions, including, but not limited to, any projects that do any of the following:~~

~~(A) Reduce greenhouse gas emissions, while achieving cobenefits such as reductions in air pollution.~~

~~(B) Increase water and energy efficiency and conservation through retrofitting, replacing, or weatherizing activities.~~

~~(C) Install clean distributed generation systems that utilize locally available renewable energy sources such as solar, wind, and geothermal energy.~~

~~(D) Initiate or enhance public mass transit, including fare subsidies to commuters.~~

~~(E) Incentive low-income, public mass transit-oriented housing development.~~

~~(F) Minimize the direct health impacts of climate change and prepare for emergencies from extreme weather events by taking actions such as the operation of air-conditioned cooling centers that are open to the public.~~

~~(G) Provide community-based greening, forestry, or water-related projects, such as stormwater capture, tree planting, and water conservation and efficiency measures that have been recognized to reduce greenhouse gas emissions and produce cobenefits.~~

~~(2) The state board shall, before June 30, 2010, adopt a methodology to identify the most impacted and disadvantaged communities, meeting all of the following requirements:~~

~~(A) The methodology shall identify, through a peer review and public process, the most impacted and disadvantaged communities as those areas within each air basin with the highest 10 percent of air pollution impacts, taking into account air pollution exposure and socioeconomic indicators.~~

~~(B) The state board shall limit its analysis to a consideration of only socioeconomic indicators for any air basin where variations of air pollution exposure within the air basin cannot be determined.~~

1 ~~(C) The air pollution exposure indicators to be considered shall~~
2 ~~include, but not be limited to, criteria and toxic pollutant levels,~~
3 ~~proximity to sources, and land use, to the extent data is readily~~
4 ~~available.~~

5 ~~(D) The socioeconomic indicators to be considered shall include,~~
6 ~~but not be limited to, income and poverty level, educational~~
7 ~~attainment, linguistic isolation, and vulnerability to air pollution~~
8 ~~impacts, to the extent data is readily available.~~

9 ~~(E) The methodology shall be reviewed and updated as~~
10 ~~necessary through a peer review and public process along with the~~
11 ~~update of the scoping plan required by subdivision (h) of Section~~
12 ~~38561.~~

13 ~~(3) (A) Before June 30, 2011, the state board, in an open public~~
14 ~~process, shall develop and adopt a report that describes the support~~
15 ~~structure and framework for the implementation of this section,~~
16 ~~the types of projects and programs to be funded under this section,~~
17 ~~the selection and oversight process for the projects and programs~~
18 ~~to be funded under this section, and the eligibility criteria for the~~
19 ~~projects and programs to be funded under this section. The state~~
20 ~~board, in its discretion, may consult with other agencies in~~
21 ~~developing the report. The report shall also provide for the~~
22 ~~formation and structure of an independent panel to review, evaluate,~~
23 ~~and recommend approval of the programs and projects solicited~~
24 ~~for funding and the biennial plans required by subparagraph (B).~~

25 ~~(B) Before December 30, 2011, and every two years thereafter,~~
26 ~~the state board, in an open public process, shall develop and adopt~~
27 ~~biennial plans describing the specific type of programs and projects~~
28 ~~to be solicited for funding during the two-year period.~~

29 ~~(C) The environmental justice advisory committee convened~~
30 ~~pursuant to subdivision (a) of Section 38591 shall be consulted in~~
31 ~~developing the biennial plans pursuant to subparagraph (B);~~
32 ~~including in the development of draft plans. Draft plans shall be~~
33 ~~submitted to the environmental justice advisory committee, and~~
34 ~~the committee shall make recommendations on those draft plans,~~
35 ~~that shall be considered prior to the adoption of the biennial plans~~
36 ~~pursuant to subparagraph (B).~~

37 ~~(4) Notwithstanding any other provision of this section, projects~~
38 ~~shall only be funded if the state board determines, based on the~~
39 ~~facts available to it, that the use of moneys for that project would~~
40 ~~be consistent with Article XIII A of the California Constitution~~

1 and ease law construing that provision. The state board shall ensure
2 in this regard that no feepayer pays for a disproportionate share of
3 the climate change harm addressed by this section.
4 (e) Costs incurred to implement the requirements of this section
5 may be recovered under the fee authority described in Section
6 38597.